

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

Criminal No.  
06-10239-WGY

\* \* \* \* \*  
UNITED STATES OF AMERICA  
v.  
JEROME T. COLEMAN  
\* \* \* \* \*

**DISPOSITION**

BEFORE: The Honorable William G. Young,  
District Judge

APPEARANCES:

JOHN T. McNEIL, Assistant United States  
Attorney, 1 Courthouse Way, Suite 9200, Boston,  
Massachusetts 02210, on behalf of the Government

FEDERAL PUBLIC DEFENDER OFFICE (By Page  
Kelley, Esq.), 408 Atlantic Avenue, Third Floor,  
Boston, Massachusetts 02210, on behalf of the  
Defendant

1 Courthouse Way  
Boston, Massachusetts

April 17, 2009

1           **THE CLERK:** All rise. Court is in session, please  
2 be seated.

3           Calling Criminal Action 06-10239, the United States  
4 v. Jerome Coleman.

5           **THE COURT:** Good afternoon. Would counsel identify  
6 themselves.

7           **MR. McNEIL:** Good afternoon, your Honor. John  
8 McNeil for the United States.

9           **MS. KELLEY:** Good afternoon, your Honor. Page  
10 Kelley, and I represent Jerome Coleman.

11           **THE COURT:** Who's present in the courtroom.  
12 Mr. Coleman, have you read the presentence report  
13 that has been prepared in your case?

14           **THE DEFENDANT:** Yes, I have, your Honor.

15           **THE COURT:** And have you talked it all over with  
16 Ms. Kelley?

17           **THE DEFENDANT:** Yes, I have, your Honor.

18           **THE COURT:** Do you believe you understand it?

19           **THE DEFENDANT:** Yes, I do, your Honor.

20           **THE COURT:** Please be seated.

21           Nothing has been withheld from the presentence  
22 report under the Rules of Criminal Procedure?

23           **THE PROBATION OFFICER:** No, your Honor.

24           **THE COURT:** Sentencing in this Court proceeds in  
25 four steps. The first step is to calculate the highest

1 constitutionally reasonable sentence. The second step is to  
2 figure out the average sentences that are imposed on an  
3 offender who commits these charges. I am quick to say that  
4 I do not in any way sentence from averages, but by  
5 consulting the available databases with respect to those  
6 average sentences, I get some sense of what weight to give  
7 to the advisory sentencing guidelines.

8 The third step is properly to calculate the  
9 advisory sentencing guidelines. And let me pause there and  
10 say if, as I make any of these calculations, if counsel  
11 would differ from anything that I say, I want you to  
12 interrupt me, I will address the matter at once and attempt  
13 to resolve it.

14 When those steps have been taken, I will turn to  
15 what is truly the most important of the determinations, and  
16 that is to consider Mr. Coleman and the needs of society in  
17 particular with respect to these offenses, and I'll hear  
18 from the government, hear from the defense, hear from Mr.  
19 Coleman if Mr. Coleman wishes to be heard from.

20 In this case, Mr. Coleman is subject -- well, let's  
21 figure out the highest constitutionally reasonable sentence.  
22 And his base offense level is at 24 given the former felony  
23 convictions for controlled substance offenses. I add four  
24 levels because he possessed a firearm in connection with the  
25 sale of cocaine. That takes us to an adjusted offense level

1 of 28, but as he is an armed career criminal that puts us at  
2 a level 34 with a criminal history category IV, and that  
3 would give us a range, the top of which would be life in  
4 prison. So the -- wait a minute. That's not right.

5 **MS. KELLEY:** That's not right.

6 **THE COURT:** That's not right, and thank you.

7 At 34, with a criminal history category IV, the top  
8 of the range would be 262 months, and it is that that is the  
9 highest constitutionally reasonable sentence.

10 Mr. McNeil.

11 **MR. McNEIL:** If I may, your Honor. Two points I  
12 would like to make. The first is that the criminal history  
13 in this case is VI rather than IV.

14 **THE COURT:** And that's because he's an armed career  
15 criminal.

16 **MR. McNEIL:** That's correct, your Honor.

17 **THE COURT:** That's what drives it up to the VI?

18 **MR. McNEIL:** That's right, your Honor. And also  
19 the way the guidelines apply as well, because there was a  
20 drug offense in connection with the --

21 **THE COURT:** All right, I accept that correction.

22 **MR. McNEIL:** There's one other correction I'll  
23 make.

24 The Court made reference to the calculation of the  
25 underlying guideline in the absence of the armed career

1 criminal and career offender guideline. And the government  
2 has some disputes about how that number is calculated.

3 **THE COURT:** But it makes no difference --

4 **MR. McNEIL:** Right.

5 **THE COURT:** -- in terms of either the application  
6 of -- and there is a mandatory minimum now, is there not?

7 **MR. McNEIL:** There is, your Honor, there's a 15  
8 year mandatory minimum.

9 **THE COURT:** Yes. And beyond that the underlying  
10 guideline calculation is not the advisory sentencing  
11 guideline.

12 **MR. McNEIL:** That's correct. The only point I want  
13 to make and then I'll make it no longer, that if on the  
14 outside chance there was to be a resentencing the government  
15 would likely reserve the opportunity at that time to argue  
16 that this additional enhancement applies. But for purposes  
17 of today there's no reason for the Court to resolve this  
18 dispute between the defense and the government.

19 **THE COURT:** And additional enhancement with respect  
20 to what so I'm clear.

21 **MR. McNEIL:** The calculation of the -- you said  
22 that the --

23 **THE COURT:** Oh, I do follow. And I just want it  
24 clear on the record here.

25 **MR. McNEIL:** Okay.

1           **THE COURT:** And so the additional enhancement is  
2 what?

3           **MR. McNEIL:** The additional enhancement is laid out  
4 on page 32 of the PSR and it would be an additional  
5 enhancement of two levels under 3C1.1.

6           **THE COURT:** And that's a position that the  
7 government has taken, but the probation has not recommended  
8 to the Court.

9           **MR. McNEIL:** Exactly. Probation has rejected that  
10 and the defendant opposes that.

11           **THE COURT:** Thank you. And the Court expresses no  
12 opinion at all, but the government has reserved its rights  
13 should there be a resentencing.

14           Now, accepting the correction, properly, that it  
15 is, given his status as an armed career criminal, the  
16 mandatory minimum sentence is 15 years in prison and the  
17 highest constitutionally reasonable sentence is 327 months  
18 in prison.

19           Now, if we look at the data relative to the  
20 imposition of such sentences, the average data published by  
21 the sentencing commission's website, it does not distinguish  
22 between armed career criminals and other offenders, and the  
23 highest range would be a firearms range. So taking that as  
24 the average, the average national sentence is 85 months in  
25 prison; the average sentence in the First Circuit is 83, 84,

1       excuse me, months in prison; in the District of  
2       Massachusetts, from the confidential database maintained by  
3       our probation department, the average sentence post-Booker  
4       is 171 months in prison. If you look at the publicly  
5       available database maintained by Mr. Womack, the official  
6       court reporter in this session, which has the sentences of  
7       this Court post-Booker, but which goes count by count, but  
8       it cannot differentiate between those who are armed career  
9       criminals or career offenders and others, the average  
10      sentence on the drug counts would be 144 months in prison,  
11      the average sentence on the firearms count would be 77  
12      months in prison.

13               Now, turning to the proper calculation of the, the  
14      advisory sentencing guidelines, the Court does award a three  
15      level reduction in light of Mr. Coleman sparing the  
16      government the burden and expense of a trial, and that takes  
17      us down to a criminal history level 31, with a, not a  
18      criminal history, but an offense level 31, with a criminal  
19      history category VI, and from which the Court derives an  
20      advisory range not less than 188 nor more than 235 months, a  
21      period of supervised release of six years, a fine of not  
22      less than 15,000 nor more than \$8 million, and there must be  
23      a \$500 mandatory special assessment, the aggregate of \$100  
24      per count.

25               Arithmetically, is the guideline range properly

1       calculated, Mr. McNeil?

2               **MR. McNEIL:**   Yes, your Honor.

3               **THE COURT:**   Ms. Kelley?

4               **MS. KELLEY:**   Yes, your Honor.

5               **THE COURT:**   Arithmetically.

6               All right, those are the first three steps, let's  
7       turn to the important step four. Mr. McNeil, I'll hear you.

8               **MR. McNEIL:**   Your Honor, I'm going to be brief.  
9       There's a plea agreement in this case. There's agreement on  
10      the applicability of the guidelines in this case that Mr.  
11      Coleman is both an armed career criminal and qualifies as a  
12      career offender in this case. There's also an agreed upon  
13      recommendation for a sentence in this case, and the  
14      government fully stands behind this sentence as being  
15      reasonable in the circumstances.

16              That recommendation is a period of incarceration of  
17      188 months. It includes a period of supervised release of  
18      six years. There's no fine recommended in this particular  
19      case. There is a \$500 special assessment recommended. And  
20      in addition, there is just a matter of forfeiture of the  
21      firearm and the ammunition that were recovered, not actually  
22      from Mr. Coleman's person, but from a location where Mr.  
23      Coleman dropped it several days before, and the government  
24      has filed prior to the hearing today an order of forfeiture.

25              And that's the government's recommendation.



1           **THE COURT:** Thank you. Ms. Kelley.

2           **MS. KELLEY:** Yes, your Honor. I'll be brief as  
3 well.

4           This is an especially bitter occasion for me. I  
5 was the head of the Middlesex County Office for the  
6 Committee for Public Counsel Services for about five years  
7 before I came to this office, and I worked very closely with  
8 Mr. Coleman's mother, Joyce Coleman, who's head of probation  
9 for the Superior Court in Middlesex County. And when I  
10 first got this case, I actually was unaware of the extent of  
11 the kind of tragedy that this family had suffered through  
12 the years. As outlined in probation's report, Mr. Coleman's  
13 father was mentally ill. Eventually he murdered his second  
14 wife and Mr. Coleman's brother, his own son, a number of  
15 years ago. He abused Joyce for many years. His behavior in  
16 spite of Joyce Coleman's incredible work ethic and  
17 determination to educate herself led to a lot of deprivation  
18 for the family and four children.

19           Mr. Coleman, interestingly enough, has these three  
20 prior drug convictions for selling drugs from 18, one is 18  
21 years ago, one is 15 years ago, and the other one short on  
22 the heels of that. So, from 15 years ago he has these  
23 convictions now coming back to enhance this sentence which  
24 would be, as I calculate it, and there's some disagreement  
25 with the government, but it's not a huge disagreement, the

1 bottom of his range would be 84 months except for these,  
2 what I consider to be just ferocious enhancements.

3 Besides just knowing and loving his mother, I have  
4 gotten to know Mr. Coleman, Jerome. And as you can see from  
5 reading the report there, he is a loving father of his own  
6 nine-year-old son. He has a long-term relationship with a  
7 woman who's 41 and has three other children whom he has  
8 raised as his own children and supported them financially  
9 and otherwise.

10 He's a licensed plumber. And his -- could you just  
11 stand up. He has two owners here of the plumbing company he  
12 was working for. They love him. He was a great worker.  
13 And they've done -- they have said they would take him back  
14 in a second.

15 Thank you very much.

16 You can see the kind of range of his family here.  
17 Sam Fern, this man on the end, was kind of taken in by  
18 Mr. Coleman's family and raised as their own son. He's a  
19 lawyer. He went to law school. All of the family members,  
20 I've met with them in their homes, say that Mr. Coleman is a  
21 totally nonviolent, wonderful, supportive member of the  
22 family. And as you can see from the letter from his sister,  
23 Tracie, who's here today and works for Harvard Real Estate,  
24 he was a great member of the community. If a neighbor had a  
25 plumbing issue he would jump in his truck and drive over

1 there and help them for free. He redid many family members'  
2 homes, the kitchens and bathrooms in their homes for them.

3 How it came to this and him getting a 16 year  
4 sentence I think has a lot to do with obviously incredibly  
5 bad judgment, but also his own financial straits. He's  
6 supporting four children and his wife, and just had great  
7 difficulty making ends meet on his plumbing salary. And he  
8 thought he could make some extra money this way. He knew  
9 Troy Lozano, the cooperating witness who asked him to sell  
10 drugs to him. The family confirms this, and he says he has  
11 never had any involvement with firearms. He resisted  
12 selling Mr. Lozano the firearm, but eventually did it. And  
13 he -- I don't think there's any question the firearm part of  
14 this was completely out of character for him and not  
15 something he ever would have volunteered to do. So, this is  
16 just a very sad day. And I would ask your Honor to take  
17 that into consideration when considering whether to accept  
18 the sentence that we agreed to.

19 He has some serious medical issues. In 2006 he  
20 suffered a stroke for which he was hospitalized, I think for  
21 about a week. And then shortly after that he had heart  
22 surgery to repair a hole in his heart. And I would ask your  
23 Honor to consider just recommending to the Bureau of Prisons  
24 that they put him at Fort Devens. He needs some additional  
25 medical testing. Although he's not in any kind of acute

1 state of needing medical care, the family and he have both  
2 suggested to me it would really ease everyone's mind if he  
3 could have the follow-up testing that he was supposed to  
4 have after these medical procedures but never had because of  
5 this case. So, if your Honor would consider doing that.

6 He is an ex-military man. He served in the  
7 Reserves from 1985 to 1993. He is very proud of that.  
8 That's one of the first things his family mentions when  
9 they're talking about his background. He did very well  
10 there. He was honorably discharged. He was Private First  
11 Class when he was discharged and a medic specialist.

12 So, to me this is just a huge tragedy personally.  
13 He has so much charisma. Whenever I've been to Walpole to  
14 see him, just spontaneously, every time, the corrections  
15 officers comment to me what a wonderful person he is. He's  
16 helping people on the unit. I have another client who's  
17 incarcerated with him who told me, also spontaneously, that  
18 he protects younger people on the unit who might be taken  
19 advantage of. He counsels people to sort out their  
20 differences verbally. He's just a great guy. He's a  
21 wonderful human being. He's going to do a lot of good in  
22 prison, sadly, now instead of outside.

23 So, that's what I have to say about Mr. Coleman.

24 **THE COURT:** Thank you.

25 Mr. Coleman, you have the right to talk to me

1 directly. You are not required to, but if you would like to  
2 say something, you may speak to me now.

3 **THE DEFENDANT:** Yes, your Honor, I would.

4 **THE COURT:** Yes.

5 **THE DEFENDANT:** Your Honor, I just want to say, I  
6 just want -- I just want the Court to know it's real simple.  
7 My family and my friends never gave up on me. I just don't  
8 want the Court to give up on me either. I can't say no  
9 more.

10 **THE COURT:** Very well.

11 Mr. Jerome Coleman, in consideration of the  
12 provisions of 18 United States Code, Section 3553(a), the  
13 information from the United States Attorney, the information  
14 from your attorney, the probation office and yourself, this  
15 Court accepts the recommendation and sentences you to 15  
16 years and eight months in the custody of the United States  
17 Attorney General. The Court imposes upon you thereafter six  
18 years of supervised release.

19 The Court imposes no fine due to your inability to  
20 pay a fine. The Court imposes a \$500 special assessment.  
21 The sentence imposed is imposed on each count and the  
22 sentences will run concurrent one with the other.

23 The special conditions of your supervised release  
24 are that you're prohibited from possessing a firearm,  
25 destructive device, or other dangerous weapon.

1           You'll participate in a mental health treatment  
2       program as directed by the probation office. You're  
3       required to pay into the costs of such program to the extent  
4       of your ability.

5           The Court imposes forfeiture as prayed for by the  
6       government.

7           Let me explain this sentence to you. This is not  
8       simple, Mr. Coleman. Though both the government,  
9       sensitively, and your attorney, in your corner, zealously,  
10      have agreed upon the recommendation. The congress has  
11      decreed in circumstances such as this a 15 year sentence,  
12      for starters. Those are the people's elected  
13      representatives. I must, and without hesitation I do,  
14      follow what they require. You get 15 years and eight  
15      months.

16          No one is giving up on you, sir. You said that  
17      very well. This is a long sentence by anyone's calculus. I  
18      do not minimize that. The sentence is imposed solely to  
19      protect the people of the United States against the sale of  
20      contraband drugs which do addict and kill people. They ruin  
21      the lives of families and children. A long sentence is, in  
22      your case, just.

23          But I have read, I always do, and in your case I  
24      have read every letter, every document that's been submitted  
25      to me. I am satisfied that you are in no way a violent

1 person. You took a course that was woefully illegal and you  
2 will pay for that many times over. But, in those long years  
3 don't think that anyone is giving up on you. Your family  
4 has not. And your extended family, those with whom you've  
5 worked, those who care about you, I know, and earnestly  
6 pray, that they'll go on caring about you.

7 In a very real sense, Ms. Kelley, your attorney,  
8 she's your attorney, she's done everything that can be done  
9 for you, and will continue to do that because that's the  
10 kind of attorney she is. The government has not been  
11 vindictive or savage here. These are the sentences that  
12 congress has required.

13 But, insofar, having imposed that sentence now,  
14 insofar as things can be done to help you and assist you, I  
15 do strongly recommend that you serve that sentence at the  
16 correctional institution at Fort Devens. I can only  
17 recommend it, but I recommend it. And I do so and state on  
18 the record that that poses the best chance not only of you  
19 getting adequate medical care, because the federal system  
20 has quite good medical care, but also so that you may  
21 maintain ties most easy with people on the outside and have  
22 something to come back to. So, no one's giving up on you.

23 Now, you are entitled to credit toward the service  
24 of this sentence from August 17th through August 18th, 2006,  
25 and from November 14th, 2006 to the present. I believe

1 that's accurate.

2 You say you visited him in Walpole, Ms. Kelley.  
3 He's been detained on these federal charges, that's what I'm  
4 told here, and he should get those credits.

5 You agree with that?

6 **MS. KELLEY:** Yes.

7 **THE COURT:** Oh, all right.

8 You have the right to appeal, Mr. Coleman, from any  
9 findings or rulings the Court has made against you. Should  
10 you appeal and should your appeal be successful in whole or  
11 in part and the case remanded you'll be resentenced before  
12 another judge.

13 Ms. Kelley, should an appeal be decided upon, I  
14 want you to order transcript from this Court before filing  
15 the notice of appeal because we'll turn around your request  
16 right away.

17 Do you understand?

18 **MS. KELLEY:** Yes.

19 **THE COURT:** That's the sentence of the Court. He's  
20 remanded to the custody of the marshals.

21 **MR. McNEIL:** Just one --

22 **THE COURT:** Yes.

23 **MR. McNEIL:** I'm sorry, your Honor. And I know  
24 it's not usually the practice, but there is an appeal waiver  
25 in this plea agreement.



1           **THE COURT:** That's, that's your position.

2           **MR. McNEIL:** Right.

3           **THE COURT:** And at the time of the plea I explained  
4           that I was going to tell him he could appeal and that if he  
5           tried you would run, you or your colleagues would run in  
6           here before me or some other judge and bring the appeal  
7           waiver to the attention of that judge. I have no occasion  
8           to rule on it. I do not. I notify him of his rights to  
9           appeal.

10          **MR. McNEIL:** Thank you, your Honor.

11          **THE COURT:** All right. That's the sentence.

12          (Whereupon the matter concluded.)  
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C E R T I F I C A T E

I, Donald E. Womack, Official Court Reporter for  
the United States District Court for the District of  
Massachusetts, do hereby certify that the foregoing pages  
are a true and accurate transcription of my shorthand notes  
taken in the aforementioned matter to the best of my skill  
and ability.

/S/ DONALD E. WOMACK 10-5-2009

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